

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.508/Ahd/2020  
Assessment Year: 2012-13**

The Assistant Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad.	Vs.	Shri Sunil Bajranglal Hurkat, 91, Hirabhai Market, D.B. Road, Kankariya, Ahmedabad – 380 022. <b>[PAN – AADPH 0985 Q]</b>
(Appellant)		(Respondent)
Assessee by	Shri Sunil B. Hurkat, Assessee	
Revenue by	Shri N.J. Vyas, Sr. DR	
Date of Hearing	19.09.2024	
Date of Pronouncement	08.10.2024	

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER:**

This appeal is filed by the Revenue against order dated 06.08.2020 passed by the CIT(A)-5, Ahmedabad for the Assessment Year 2012-13.

2. The Revenue has raised the following grounds of appeal :-

- “(1) *The Ld. CIT (A) has erred in law and on facts in deleting the disallowance of R6.76.623/- made u/s. 10(38) of the I.T. Act.*
- “(2) *The Ld. CIT(A) has erred in facts and in law in deleting the disallowance u/s. 10(38) of the Act holding that the Long Term Capital Gain earned by assessee from sale of shares of penny scrip i.e. M/s. Gemstone Investment Ltd. (GIL) is genuine Income.*
- “(3) *The Ld. CIT(A) had erred in facts and in law holding that the Long Term Capital Gain earned by the assessee is genuine, totally ignoring the financial strength of the company as well as the facts that the company did not undertake substantial business activity.*

- (4) *On the facts and circumstances, the Id. CIT(A) ought to have upheld the order of the u/s. 143 r.w.s. 147 of the Act passed by the Assessing Officer.*
- (5) *It is therefore prayed that the order of the Ld. CIT(A) may be set aside and that of the order of the Assessing Officer be restored to the above extent.*
- (6) *It is further prayed that the present appeal comprises the issue of organized tax evasion scam, Involving claim of bogus long term capital gain through penny stocks for which the CBDT vide Circular No.23 of 2019 dated 06.09.2019 read with OM dated 16th September, 2019 exempted such cases from monetary limit for filling appeal, hence the appeal be decided on merits.”*

3. The assessee filed return of income on 12.07.2012 declaring total income of Rs.10,33,470/-. Thereafter, the case was reopened under Section 147 of the Income Tax Act, 1961 after duly recording the reasons and due sanction of PCIT. Accordingly, notice under Section 148 of the Act was issued on 22.03.2019 and duly served upon the assessee. Thereafter, notice under Section 143(2) of the Act dated 30.08.2019 was issued to the assessee. The assessee did not file return of income on 03.04.2019 in response to notice under Section 148 of the Act. Notice under Section 142(1) of the Act was also issued to the assessee. The Assessing Officer observed that the assessee is an individual and considering the year under consideration derived income under the head salary, business and other sources. As per the information, it was found that M/s. Gemstone Investment Limited has been put under graded surveillance measure framework. The Assessing Officer observed that the assessee traded in the scrip of Gemstone Investment Limited and claimed Long Term Capital Gain of Rs.6,76,623/- during the Financial Year 2011-12 relevant to the Assessment Year 2012-13. The assessee has not given the details and, therefore, the Assessing Officer made addition of Rs.6,76,623/- as unexplained money.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) was not right in deleting the disallowance of Rs.6,76,623/- made under Section 10(38) of the Act as the assessee has not demonstrated the purchase as well as the sales of the 10000 shares. The Ld. DR

further submitted that the assessee has not given the details related to the contract note as to how the holding of M/s. Gemstone Investment Limited (scrip) has arrived at Rs.5,000/- quantity on 31.12.2004. The Ld. DR submitted that the CIT(A) was not right in deleting the addition when the Assessing Officer has doubted the purchase as well as sales as in paragraph no.5 specifically mentioned that the funds that were raised through share capital was not used for any business expansion and have been further advanced as loans and investments and the assessee had transacted in the said shares/scrips in normal course of share trading business within the short period. Therefore, the Long Term Capital Gain as claimed by the assessee is not genuine.

6. The Ld. AR submitted that the CIT(A) has rightly allowed the assessee's appeal as the transaction of purchase of shares was executed through a Broker registered with SEBI and the transaction had taken place on the floor of stock exchange. The Ld. AR submitted that the transaction was duly evidenced by purchase bill and contract notes issued by the broker and the shares purchased by the assessee were transferred in the Demat Account of the assessee and the consideration of purchase was through banking channel only. The investment was duly reflected in the Balance Sheet of the assessee and the shares were held for a period of two years and thereafter were sold. The sale had taken place through stock exchange and registered broker as well as the sale consideration was received through banking channel. The Ld. AR submitted that the sale bills as well as the payment of service transaction tax was also placed before the CIT(A). The Ld. AR also placed on record copy of the statement of assessee's Demat Account to establish the holding of shares of M/s. Gemstone Investment Limited to the extent of 1,00,000 shares. The Ld. AR submitted that after purchase the company has split up the shares in the ratio of 1:10 in the year 2010 and on 17.08.2010 one lakh splitted shares have been credited in assessee's Demat Account. Thus, the fact of splitting of shares is evident from the transaction (Demat statement of the assessee). Thus, the Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. As per the reasons recorded, it was clearly stated that the assessee sold shares of Rs.9,09,500/- that of scrip mainly M/s Gemstone Investment Limited. The assessee before the Assessing Officer has failed to substantiate its claim that it had

transacted shares in the normal course of share trading business. In fact, the transaction was simple shares and earning Long Term Capital Gain on the same within the period of two years was not duly demonstrated before the Assessing Officer. The assessee has submitted the contract note from 01.01.2007 thereby stating the split of one lakh shares of Gemstone Investment Limited as on 17.08.2010 but the said statement of transaction is not tallying with the contract note dated 26.06.2009 produced before us by the Ld. AR as the quantity is reflecting only to the extent of 30,000 only. The splitting of the said share scrip has not been demonstrated by the assessee before the Assessing Officer as well as before the CIT(A). Though it is only mentioned in the reply dated 19.04.2019 the mechanism has not been demonstrated as to how the splitting of shares took place. The purchase was in the year 2009 but the splitting of the shares was indicated to have happened in the month of Aug 2010 but on what basis it has been done has not been demonstrated by the assessee at any point of time. Therefore, the CIT(A) was not right in allowing the appeal of the assessee.

8. In the result, appeal of the Revenue is allowed.

Order pronounced in the open Court on this 8<sup>th</sup> October, 2024.

*Sd/-*  
**(NARENDRA PRASAD SINHA)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 8<sup>th</sup> October, 2024**

**PBN/\***

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*